



Paper No. 6

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MAR 27 2003

In re Application of
Finke et al.
Application No. 10/032,803
Filed: December 28, 2001
Attorney Docket No. 28-011564

OFFICE OF PETITIONS
DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition, filed August 28, 2002 (certificate of mailing date August 21, 2002), under 37 CFR. §1.47(a).

The petition under 37 CFR. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on December 28, 2001, without an executed oath or declaration. Accordingly, on January 22, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring for the purposes of this decision an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of March 22, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a five (5) month extension of time was also submitted. In support of the petition, applicants submitted a statement of facts and a copy of correspondence sent to inventor Finke.

A grantable petition under 37 CFR. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirement (1).

As to item (1), Rule 47 applicant has failed to show that inventor Finke was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The statement of facts indicates only the declaration and assignment documents were sent to inventor Finke. Notwithstanding inventor Finke's

request for compensation to review the documents, inventor Finke must be presented with the opportunity to sign the application papers before rule 47 status will be granted.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.



Charlema R. Grant
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